

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OWN CAPITAL, LLC,

Plaintiff,

Case No. 11-mc-50754

vs.

HON. GEORGE CARAM STEEH

PRESTIGE NISSAN, INC.,
et al.,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR ALTERNATE SERVICE [DOC. 2]

Plaintiff, Own Capital, LLC, moves for alternate service of process to be effected upon defendants Michael Craig Hornsby, Colby C. Hornsby and Prestige Nissan, Inc. Service upon an individual or corporation may be effected pursuant to the law of the state in which the district court is located, here being Michigan. Fed. R. Civ. P. 4(e) and (h). Michigan law provides that, "[o]n a showing that service of process cannot reasonably be made as provided by this rule, the court may by order permit service of process to be made in any other manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard." M.C.R. 2.105(l)(1). Mr. Hornsby is the owner of Prestige Nissan, Inc. and Mrs. Hornsby is the manager and secretary of Prestige Nissan, Inc. The two remaining named defendants, Pretige Imports of Thomasville, Inc. and Prestige Motorcar Gallery, Inc. filed for bankruptcy protection under Chapter 11 in January 2011.

In support of its motion for alternate service, plaintiff provides the affidavit of the process server, which states that two attempts were made to serve Mr. Hornsby at his

last known residence. The address was confirmed by Mr. Hornsby via email communication to be his and his wife's current residential address. Mr. Hornsby stated that he is always available at the stated address, and is not trying to hide from process servers. However, the process server attests that he was unable to gain access to the electronic gate at the Hornsby's residence. Plaintiff has shown that service of process cannot be made on defendants Michael Craig Hornsby, Colby C. Hornsby and Prestige Nissan, Inc. under M.C.R. 2.105(A) and (D), by delivering the notice of filing and motion to confirm arbitration award to the individual defendants personally.

Plaintiff suggests as an alternate means of service of process mailing notice by first class mail. The court adds as an additional requirement that the notice of filing and the motion to confirm arbitration award be mailed by registered mail, return receipt requested, to defendants at 4442 Thomasville Road, Tallahassee, Florida 32309; and copies shall be affixed with adhesive tape on the locked gate at defendants' residence. The court approves of this alternate means of service of process, as reasonably calculated to give defendants actual notice.

So Ordered.

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: October 5, 2011

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on October 5, 2011, by electronic and/or ordinary mail.

s/Josephine Chaffee
Secretary/Deputy Clerk